

REMARKS

Claims 1-20 are pending in this application, of which Claims 1 and 12 are in independent form. Claims 1, 9 and 12-16, 18 and 19 have been amended to define more clearly what Applicant regards as the invention. Claim 21 has been newly added to afford Applicant a more complete scope of protection to which he is entitled. Reconsideration of the present claims is respectfully requested.

The Examiner has objected to Claims 12-20 for including reference characters not enclosed within parentheses. Applicant gratefully acknowledges the Examiner's indication that Claims 12-20 would be allowable if rewritten to overcome the aforementioned objection. The claims have now been amended to include such parentheses around the characters as kindly suggested by the Examiner, with Claim 16 having also been amended as to its dependency, and accordingly, are now believed to be in condition for allowance.

Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph for alleged indefiniteness in the phrase "said front panel flap" and in the last three lines of Claim 1. Claim 1 has been amended make clear that the sidearm is capable of interleaving between the inner side of one of said side panels and the front panel flap disposed on said side panel. Accordingly, Applicant submits that Claims 1-11 now satisfy the requirements of 35 U.S.C. § 112, second paragraph.

Further in the Office Action, the Examiner has rejected Claims 1-4 and 8 under 35 U.S.C. § 103 (a) as allegedly being unpatentable over both U.S. Patent No. 3,593,908 (Desmond) in view of U.S. Patent No. 4,752,029 (Buford) and, along with

Claim 11, as allegedly unpatentable over US. Patent No. 4,602,735 (Aaron) in view of Buford. Applicant respectfully traverses these rejections, for the following reasons.

It will be apparent that the claim has been amended to make clear that the carton is either open at the top or has a top which may be removed in whole or in part. The present invention of Claim 1 is directed toward a unitary carton, such as shown in Figure 2, which optionally may have a top panel joined to the side and back panels. If the optional top panel is present then it is removable in whole or in part to expose a product to the consumer through the top of the carton. The claim also requires the presence of the radially-openable front access panel. Support for this clarifying amendment can be found, for example, in paragraphs 22, 26 and 33 of the present specifications and Figures 1 and 2. This configuration is advantageous in that it enables to allow customers greater ease of access to items that may be stored within Applicant's carton.

Desmond, on the other hand, relates to a vertically-standing dispenser bin with a movable bin part portion 27 on the front face 22-23 of the carton. *See* Figures 1, 3 and 5. Applicant respectfully believes the opening on the bin in Desmond to be limited to the space bordered by the moveable and fixed front panel portions 22 and 23, respectively, and bin side panels 42. *See generally*, Figure 3 and column 2. Under this configuration, greater access to any items stored therein is obstructed by the presence of the top, fixed front panel portion 23. This differs from Applicant's carton which affords a much larger potential opening by virtue of the combined open space formed of the open top or removal of at least a portion of the top panel, if present, and radially-openable front access panel.

Buford does not remedy the deficiencies of Desmond. This reference is directed to carton that is likewise vertically-oriented with a display bin disposed on the

front panel 12. *See* Figures 7-9. Here, the front opening of the cited reference is limited to the space bordered by front panel 12, front bin wall section 50, and side bin wall sections 54 and 56.

Applicant respectfully submits that a combination of Desmond and Buford would fail to teach the carton of the present invention that provides access to the product through both the front and top of the carton. At best, any such combination would instead result in a vertically-standing carton with a lip accommodation panel and an access panel that is limited to the opening created by only the moveable bottom portion of the front face of such combination device. In contrast, the present invention clearly provides for access through the top of the carton as well as the outwardly-extending access panel 15. Accordingly, it is respectfully submitted that Claim 1 cannot be obvious over Desmond in view of Buford.

Moreover, Claim 1 is further believed patentable over the combination of Aaron with Buford. As understood by Applicant, Aaron is directed to a dispensing bin carton with a pull-out lower front panel 10. As illustrated in Figure 1, the carton of Aaron is likewise a vertically-oriented dispenser. Here, too, the opening is limited to the space bordered by the top edge of the panel 10, the sliding lock tabs 11 and the lower edge of the upper front panel 18.

Unlike the present invention, a combination of Aaron with Buford would, at best, result in only a vertically-oriented carton with a less-accessible front panel access opening. That is, the present combination would largely resemble the combination of Desmond with Buford, including all of its shortcomings, but with the added locking mechanism tab 10a and slit formation 18a on the upper front panel (*See* Aaron, column 4,

lines 1-4) and a lip accommodation panel. Conversely, by having the top edge of the front access panel intersect with an edge of the top access panel, the present invention teaches a more-convenient access opening. Thus, it is respectfully submitted that Claim 1 cannot be obvious over Aaron in view of Buford.

Accordingly, Applicant submits that amended Claim 1, together with the remaining claims depending therefrom, are patentably distinct over Desmond and Aaron, both in view of Buford, and respectfully requests withdrawal of the rejections under 35 U.S.C. §103(a).

Additionally, Applicant has added new Claim 21 in order to obtain a more complete scope of protection. Support is located throughout the specification, and particularly in Figure 2 and paragraph 27. Thus, no new matter has been added.

Claim 7 is also rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the above-mentioned art combinations further in view of either U.S. Patent No. 5,857,586 (Scherr) or U.S. Patent No. 4,560,062 (Valiulis). These rejections are respectfully traversed.

While conceding that “[e]ach of modified Desmond and modified Aaron fails to disclose a means for affixing the carton to a surface”, the Examiner contends that it would have been obvious to apply the hook and loop fasteners of Scherr or the holes for a hanging rod in Valiulis to the modified prior art combinations, for a means of affixing the cartons. However, Applicant respectfully submits that these references do not remedy the deficiencies discussed above and, therefore, Claim 7 cannot be obvious over modified Desmond or Aaron in view of Scherr or Valiulis.

Further, Claims 9 and 10 are rejected under 35 U.S.C. §103(a), also as allegedly obvious over the prior art combinations as applied to Claim 3, further in view of U.S. Patent No. 6,213,388 (Ours et al.). Applicant respectfully traverses this rejection.

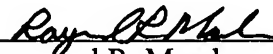
Here, the Examiner takes the position that, although the modified Desmond and Aaron both fail to disclose a holding means on the sidearms, it would have been obvious to incorporate the teaching of Ours to these modified combinations. Again, Applicant respectfully submits that Ours does not remedy the deficiencies discussed above. Accordingly, for at least the same reasons, the modified Desmond or Aaron together with Ours would not make obvious the present invention. Accordingly, Claims 9 and 10 are believed patentable over the art of record.

Wherefore, it is respectfully submitted that the cited art does not disclose or suggest the presently claimed invention. Accordingly, passage to issue of presently claimed invention is respectfully requested.



Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

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